IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

FAO.No. 361 of 2007()

OS.100/2007 of SUB COURT, PALA
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APPELLANT/PETITIONERS/PLAINTIFFS
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1. C.S.KAMALAMMA, W/O.SANKARA PILLAI,
KOTTARATHIL HOUSE, THAKAZHY P.O.,
ALAPPUZHA DISTRICT.

2. G.JAIKRISHNAN,
S/O. THE LATE GOPALAKRISHNAN NAIR,
MADATHANIYIL HOUSE, CHENGALAM P.O,
ELAMKULAM, KOTTAYAM DISTRICT.

3. DEEPA G.NAIR,
D/O.THE LATE GOPALAKRISHNAN NAIR,
MADATHANIYIL HOUSE, CHENGALAM P.O.,
ELAMKULAM, KOTTAYAM DISTRICT.

BY ADV. SRI.O.V.RADHAKRISHNAN (SR.)
SMT.K.RADHAMANI AMMA
SRI.ANTONY MUKKATH

RESPONDENTS: CR.PETITIONERS/DEFENDANTS
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1. M.L.SUKUMARI AMMA, D/O.LAKSHMI AMMA,
NISHANTH, CHETTIKULANGARA, TC 28/2666,
VANCHIYOOR KARA, VANCHIYOOR VILLAGE,
G.P.O., THIRUVANANTHAPURAM, PIN 695 001.

2. LAKSHMIAMMA, D/O.KALYANI AMMA, AGED
98 YEARS, AT PRESENT RESIDING AT NISHANTH,
CHETTIKULANGARA, TC 28/2666, VANCHIYOOR KARA,
VANCHIYOOR VILLAGE, G.P.O., THIRUVANANTHAPURAM,
PIN 695 001.

BY ADV. SRI.M.BALAGOVINDAN
SRI.T.K.ANANDA PADMANABHAN

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & V.K.MOHANAN,JJ.

F.A.O.N0.361 OF 2007

Dated, 19th December, 2007.

JUDGMENT

Raman, J.

This appeal is filed by the plaintiff against the order dismissing I.A.1394 of 2007, an application seeking injunction restraining the Ist defendant from alienating or encumbering or committing waste in the plaint schedule property. The suit is one for setting aside the settlement deed No.3407/2007 of Kanjirappally sub Registrar's Office executed by the 2nd defendant in favour of the Ist defendant. According to the plaintiff, the 2nd defendant had executed the will bequeathing the properties in favour of the legal heirs. The application was resisted by filing counter affidavit. The court below dismissed the application.

2. Heard the appellant.

3. Even if the settlement is ultimately set aside, the plaintiff will get no right over the property until the death of the 2nd respondent. Thus, as on today, the appellants will

have no right over the plaint schedule property. further, an application was moved for appointing a next friend to represent the 2nd defendant in the suit. In that application, the 2nd defendant itself was examined through commission and based on the evidence, that application was dismissed on 20-11-2001 holding that the 2nd defendant who was the 2nd respondent was having capacity to look after her affairs and that there is no necessity to appoint a court guardian for second defendant. That order has become final. It was in this situation the court below refused to grant the relief.

4. In the circumstances, we feel that no interference is called for. The appeal is dismissed.

However, the court below shall dispose of the suit untrammelled by any of the observations contained in the impugned order and in this judgment.

P.R.RAMAN, JUDGE.

V.K.MOHANAN, JUDGE.

kvm/-

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: